IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 9TH APRIL 2007 / 19TH CHAITHRA 1929

SA.No. 799 of 1996()

AS.34/1994 of DISTRICT COURT,KOLLAM
OS.577/1987 of PRL.M.C., KOLLAM
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APPELLANT/RESPONDENT/PLAINTIFF:

V.P. MADHAVAN, KULATHIL PURAYIDATHIL, ANDAMUKKOM WARD, KOLLAM.
(DIED)
ADDL. APPELLANTS 2 TO 9 IMPLEADED.

2: RAJAMMA, W/O LATE V.P. MADHAVAN, KULATHIL PURAYIDATHIL, ANDAMUKKOM WARD, KOLLAM.

3: SUDHEER KUMAR, S/O LATE V.P. MADHAVAN, OF -DO- DO-

4: ANIL KUMAR, S/O LATE V.P. MADHAVAN, OF -DO- DO-

5: RADHIKA, D/O LATE V.P. MADHAVAN, OF -DO- DO-

6: AMBIKA, D/O LATE V.P. MADHAVAN, OF -DO- DO-

7: KRISHNA KUMAR, S/O LATE V.P. MADHAVAN, OF -DO- DO-

8: RENUKA, D/O LATE V.P. MADHAVAN, OF -DO- DO-

9: SUNILKUMAR, S/O LATE V.P. MADHAVAN, OF -DO- DO-

ADDITIONAL APPELLANTS 2 TO 9 ARE IMPLEADED AS THE LRS. OF DECEASED 1ST APPELLANT AS PER ORDER DATED 19.1.05 IN I.A.85/05.

BY ADV. SRI.V.N.ACHUTHA KURUP
SRI.B.S.SWATHY KUMAR
SRI.K.HARILAL
SRI.BINDU SREEKUMAR
SRI.K.G.RENGANATH

RESPONDENTS/ APPELLANTS/ DEFENDANTS :
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1. STATE OF KERALA, REP. BY THE CHIEF SECRETARY, SECRETARIAT, THIRUVANANTHPAURAM.

2. THE DISTRICT COLLECTOR, KOLLAM.

3. TALUK TAHSILDAR, KOLLAM.

R1 TO R3 BY SENIOR GOVERNMENT PLEADER
SRI. V.T.K. MOHANAN.

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 09/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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S.A. NO. 799 OF 1996

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Dated this the 9th day of April, 2007.

J U D G M E N T

This appeal is preferred against the judgment and decree of the District Judge, Kollam in A.S.34/94. The brief facts necessary for the disposal of the appeal are stated as follows. The appellant herein filed a suit before the Munsiff Court, Kollam for a mandatory injunction as well as for a prohibitory injunction. According to him he is in possession of the Government land and he has filled up the land. It is also contended by him that in response to a notice issued by the Tahsildar he had replied that he is prepared to purchase the property for the land value and not for the market value. Therefore, he requests the Court to direct the Government to assign the land in his favour. It is also contended by him that without recourse to due process of law he shall not be evicted from the property. The Government, on the other hand, would contend that the provisions of the Land Conservancy Act as well as Land Assignment Act does not enable the legal representatives of plaintiff to get the relief of mandatory injunction and as there is no cause of action the prayer for injunction also will not lie.

2. The trial court on a consideration of the entire materials granted a decree for prohibitory injunction. It is against that an appeal was preferred and the Appellate Court relying upon the provisions of S.9 of the Specific Relief Act and S.6 of the Land Assignment Act non-suited the legal representatives of plaintiff for mandatory injunction and held that the legal representatives of plaintiff has not succeeded in proving the cause of action of forcible eviction and therefore refused the relief of permanent injunction as well. It is against that decision the present second appeal is preferred.

3. The questions of law raised and now reformulated are as follows:

(1) Whether the Appellate Court was justified in holding that the civil Court has no jurisdiction and that the relief of mandatory injunction cannot be granted u/s 39 of the Specific Relief Act?

(2) Whether the legal representatives of plaintiff is entitled to the prohibitory injunction in the light of the threat by the Governmental authorities?

Points 1 and 2:

4. The case of the legal representatives of plaintiff is that he is in occupation of 10 cents of land belonging to the Government and the original plaintiff has refilled the land and they are entitled to purchase under the provisions of the Land Assignment Act. It is also

submitted that they are residing in the property. Land Conservancy Act as well as Land Assignment Act stipulates the procedure for giving relief of purchase by the occupant. They are self-contained statutes. In this case the Tahsildar has issued a notice directing the original plaintiff to purchase the property on payment of market value of the property to which the plaintiff replied that he will not be in a position to pay the market value but will pay the land value for the property. It ended there and there was no further proceeding on that behalf. In order to get assignment of property under the Land Assignment Act necessarily legal representatives of plaintiff has to follow the formalities and procedures and the Government can assign the property only on satisfaction of the conditions enumerated under the Land Assignment Act. In the absence of the same, no statutory authority can assign the land in favour of the legal representatives of plaintiff . So, as rightly held by the learned District Judge by invoking S.39 of the Specific Relief Act there cannot be any mandatory injunction against the provisions of the statutory enactment to assign the property in favour of the legal representatives of plaintiff. Therefore, the Appellate Court was perfectly justified in refusing the relief u/s 39 of the Specific Relief Act.

5. The next question is with respect to the eviction of the property. Admittedly, the legal representatives of the plaintiff are in possession of the property. It is a well settled principle that a person

in occupation of the property can be only evicted under due process of law after complying with the statutory requirements envisaged under the statute. There is only a notice issued for eviction. So, I make it very clear that the Governmental authorities can only dispossess the legal representatives of plaintiff after complying with all the statutory requirements under the provisions of the Land Assignment Act and Land Conservancy Act. It is also made clear that the dismissal of the second appeal in no way will affect the legal representatives of the plaintiff approaching the Government for the purchase of land in accordance with the provisions of the Act. Parties are directed to bear their respective costs. The second appeal is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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M.N. KRISHNAN, J.

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S.A. NO. 799 OF 1996

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J U D G M E N T

9th April, 2007.